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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 816 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHARITY COMMISSIONER

Versus

TEJENDRAPRASADJI DEVENDRAPRASADJI

Appearance:

MR KC SHAH Ld. AGP for Petitioner

MR SR SHAH for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/08/2000

ORAL JUDGEMENT

The present appeal filed by the Charity Commissioner, Gujarat State, is against the judgment and order passed by the learned City Civil Judge, Ahmedabad

in Civil Suit No. 3093/1975 dated 31.7.79, whereby the learned judge was pleased to declare and decreed that the sanction of Rs. 51,000/ by the Committee for the purpose of marriage expenses of the daughter of the Acharya (plaintiff's sister Shri Rajendra Kunverben) by its Resolution No. 1 dated 21.1.1965 as modified by its Resolution No. 5 dated 27.12.1966 is legal and valid and within the powers of the Committee, under Clause 16, sub-clause (1) of the Scheme for the management of the Trust of Swami Narayan Temple, Ahmedabad. The learned judge was further pleased to declare that the costs of the plaintiff, the defendant no. 1 learned Charity Commissioner and the defendants no. 2,3,4,5,8,9 and 10 to be provided for from the Trust. Rest of the defendants to bear their costs.

2. The facts giving rise to the present appeal are as under:

The predecessor of the present plaintiff viz. Shri Devendraprasadji Vasudevprasadji became the Acharya in the year 1936. He wanted to perform the marriage of his son Shri Tejendraprasadji. He, therefore, wrote a letter dated 17.11.1964 to the Committee which was working under the Scheme framed by the Bombay High Court for the sanction of reasonable amount of expenses for the marriage occasions of the present plaintiff as well as plaintiff's sister. Thereupon, by resolution dated 21.1.1965 ex. 45, the Committee sanctioned Rs. 91,000/ for the marriage expenses of the plaintiff's sister in addition to the amount received in the form of Chandla (gift in the form of money).

The then learned Charity Commissioner, Gujarat State,objected to this resolution and informed the plaintiff's father by letter dated 25.1.65 not to take the sanctioned amount from the temple. The plaintiff's father Devendraprasadji Vasudevendraprasadji wrote a letter dated 15.12.1966 to the committee with an idea of modification and clarification for net sanction of marriage expenses of the plaintiff and his sister. The committee thereupon reconsidered the previous resolution dated 21.1.1965 and passed a resolution no. 5 dated 27.12.1966 sanctioning the amount of Rs. 91,000/ and Rs.. 51,000/ for marriage expenses respectively of the plaintiff and his sister, and the amount received in cash by Chandla was resolved to be credited to the temple. It appears that this resolution was not objected by the then Learned Charity Commissioner. But, this resolution could not be given effect as the plaintiff's marriage could not be performed on account of unavoidable circumstances and

his sister's marriage was performed on 12.5.1969. The plaintiff's father had to incur expenses of Rs. 1,13,000/ and the amount of Rs. 35,869/ received by way of Chandla was credited to the temple as per the said resolution. However, as the amount sanctioned was Rs. 51,000/ for the marriage expenses of plaintiff's sister, the plaintiff's father had to write a letter dated 20.7.67 to the Committee for sanction of additional expenses. The committee examined the account and ultimately decided to pass necessary resolution in the meeting of the Committee which was to be held on 10.10.1967. In the meantime, the learned Charity Commissioner wrote a letter dated 6.10.1967 to the father of the plaintiff and asked him to pay the additional amount of marriage expenses of his daughter to the temple and similarly issued orders by his letter dated 6.10.1967 to all the members of the Committee not to sanction the additional amount. It was as a result of the demand for the payment of additional expenses i.e. expenses more than Rs. 51,000/, that the learned Charity Commissioner had written such a letter and consequently the Committee vide resolution dated 10.10.67 postponed the matter, keeping the same in abeyance. Thereafter, there was some correspondence between plaintiff's father and learned Charity Commissioner, as a result of which, by notice dated 3.5.1968 bearing Outward No. 9040/1868, asked the father of the plaintiff to apply to the Court for direction as to whether the expenses of the marriage of his daughter was coming within the scope or purview of the clause 16 (1) of the Scheme.

The plaintiff's father therefore, preferred and filed Civil Misc. Application NO. 245/68 to the City Civil Court, Ahmedabad for the opinion and or directions in the matter. It appears that pending the application, the plaintiff's father died on 12th October 1969 and the plaintiff had joined in the said application as the applicant. IN the said application, the City Civil Court opined on 18.7.1975 that the provision of marriage expenses was not covered by clause 16 (1) of the Scheme and it was directed that the plaintiff should take Chandla amount and should return the marriage expenses incurred from the Trust. It is the case of the plaintiff that the opinion rendered by the City Civil Court is not a decision in a regular matter,but is merely an opinion in a summary proceedings, and therefore, there is no bar to file a civil suit. The plaintiff, therefore, filed the present suit for a declaratory decree that the resolutions seeking an amount of Rs. 51,000/ paid by the committee for the purpose of marriage expenditure of the daughter of the deceased Acharya Shri Devendraprasadji

Vasudevprasadji, by its resolution no. 1 dated 21.1.1965 and reaffirmed by its resolution no. 5 dated 27.12.1966 are in consonance with and within the powers of the Committee vide clause 16(1) for the management of the properties pertaining to the Swami Narayan Temple at Ahmedabad and the temples subordinate thereto framed by the Bombay High court by judgment dated 10.10.1934.

3. Learned Charity Commissioner, defendant no. 1 filed the written statement at ex. 31. It was, inter alia, contended by him that in view of Civil Suit No. 533 of 1962 before the City Civil Court, Ahmedabad where clause 16 is inter alia required to be interpreted, this suit deserves to be stayed under sec. 10 of the Code of Civil Procedure as the matter is also directed and substantively an issue in the previous suit. It was further contended that in view of the decision in Miscellaneous Application No. 245 of 1968 there is a bar of res judicata in the suit. The learned Charity Commissioner also denied the allegations of the plaintiff with regard to the interpretation of clause 16 of the Scheme. In substance, the learned Charity Commissioner contended that the plaintiff's suit is not maintainable at law.

4. After framing necessary issues at ex. 39, on the basis of the pleadings and considering the documentary evidence on the record, the learned trial judge pleased to pass the judgment and decree in favour of the plaintiff, as stated above.

5. Mr KC Shah learned AGP appearing for the appellant challenged the judgment of the City Civil Court by contending that the learned City Civil Judge ought to have held that the suit was barred by principle of res judicata. In the submission of Mr. Shah in view of the direction and opinion given by the City Civil Court, Ahmedabad in Civil Misc. Application No. 245/1968, the present suit was barred by the principle of res judicata.

Mr KC Shah learned AGP further contended that the learned judge ought to have held that the suit filed was merely for declaration without claiming any consequential relief and, therefore, the suit is not maintainable and tenable at law. Finally, Mr Shah submitted that the learned judge has not properly considered the provision of clause-16 of the Scheme framed by the Bombay High Court. In the submission of Mr Shah, learned trial judge has erred in declaring the resolution no. 1 dated 21.1.1965 as modified by its resolution no. 5 dated 27.12.1966 as legal and valid and within the powers of

the Committee under clause -16(1) of the Scheme.

6. Mr SR Shah learned counsel appearing for the original plaintiff on the other hand, supported the judgment of the trial court in toto. Regarding the first contention of Mr KC Shah, learned AGP, that the present suit is barred by the principle of res judicata inasmuch as the opinion and direction given by the City Civil Court in the Misc. Civil Application NO. 245/68 filed by the plaintiff's predecessor, the present suit is barred by the principles of res judicata under sec. 11 of the Code of Civil Procedure, is a contention raised just for the sake of raising the same. On the facts stated above, the predecessor of the plaintiff in pursuance to the letter dated 3.5.1968, ex. 54, given by the Charity Commissioner asking the predecessor of the plaintiff to obtain the opinion of the competent court as to whether the expenses for marriage of the plaintiff's sister are covered by clause -16 of the Scheme, filed an application being Misc. Civil Application NO. 245/1968 before the City Civil Court, Ahmedabad. The City Civil Court, Ahmedabad by its order dated 29.9.1975 vide ex. 73, passed the following order:

> "It is opined that the expenses of the marriage of the daughter of the applicant are not covered by clause 16(1) or A or B. This amount is required to be met from the amount of Rs. 2,000/ which he receives every month for his personal expenses. The Committee had no power to sanction any amount for the marriage expenses of daughter of Guru. He is, therefore, directed that if he had spent any amount from the temple for the marriage expenses of his daughter, he should return that amount to temple. This is both an advise and a direction as contemplated by sec. 56(A) of the Bombay Public Trust Act.
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> In view of the fact that he had to spend the amount from the amount which he was receiving monthly, the Chandla amount is required to be kept by him and not to be given to temple."

It is not in dispute that the predecessor of the plaintiff filed an application for the opinion under sec. 56(A) of the Bombay Public Trust Act, 1950. Section -56(A) of the Bombay Public Trust Act, reads as under:

Section :56(A): "Save as hereinbefore provided in this Act, any trustee of a public trust may apply to the Court, within the local limits of whose jurisdiction the whole or part of the subject-matter of trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or, administration of the trust property or income thereof, and the Court shall give its opinion, advice, or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal."

Reading the aforesaid provision, it is clear that section 56(A) contemplates an application and not the suit. The nature of the proceedings under sec. 56(A) of the Bombay Public Trust Act is summary. The said provision does not give any right to the parties or the trustees. It merely envisages the clarification about existing doubts. The Privy Council in the case of Babu Bhagwan Din & Ors. vs. Gir Har Saroop & Ors, reported in AIR (1940) 7. While considering the case under Charitable and Religious Trusts Act, 1920 held that the decision by the District Judge under this Act is one from which by section 12 of the Charitable and Religious Trust Act, 1920, no appeal is prescribed. It was further held that such a decision in a summary proceedings which is not a suit nor of the same character as suit and it has not been made final by any provision in that Act. It has been thus, ruled that the doctrine of res judicata does not apply so as to bar a regular suit even in the case of a person who was a party to the proceedings under that Act. On mere perusing the provisions of Charitable and Religious Trusts Act, 1920 and the provisions of sec. 56(A) of the Bombay Public Trust Act, it is clear that the provisions of respective two Acts are quite same to each other and, therefore, the principle laid down by the Privy Council in the case of Babu Bhagwan Din (supra) is applicable to the facts of the case. In that view of the matter, I am of the opinion that the present suit is not barred by the principles of res judicata under sec. 11 of the Civil Procedure Code, even though the opinion and

direction are given by the City Civil Court, Ahmedabad interpreting clause 16(1) of the scheme, I, therefore, find no substance in the first submission urged by Mr KC Shah learned AGP and, therefore, the same is rejected.

7. Regarding the second contention of Mr Shah that the suit is not maintainable and tenable at law as the suit is merely for declaration without claiming any consequential relief, it is necessary to refer to the certain provisions of law.

Section - 34 of Specific Relief Act, 1963 provides for discretion of the Court as to declaration of status or right, provides as under:

Section-34: "Discretion of court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation:- A trustee of property is a "person to deny " a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

Section-56(A) of the Bombay Public Trusts Act, referred above, clearly provides that proceedings under sec. 56(A) are summary proceedings. Section -39 of the Bombay Public Trusts Act, authorises the Deputy Or Assistant Charity Commissioner to hold inquiry against the Trustees or any other person found guilty of gross negligence, a breach of trust, misapplication or

misconduct causing loss to the public trust, and to make a report thereof to the Charity Commissioner.

The consequence of non-compliance with direction given in Section 56 (A) would be to commit the breach of trust. It may be that inquiry under Section 39 of the Bombay Public Trusts Act may be taken but it can be taken not necessarily as a consequence of direction under Sec. 56(A) of the Bombay Public Trusts Act. At best it can be said that the proceedings under Sec. 56(A) of the Bombay Public Trusts Act and the result thereof that if the opinion or direction is not given in favour of the person a shadow is cast on the right of the person. Therefore, the consequence would be to pray for declaration in a regular suit and not to pray for an injunction. If the direction under sec. 56(A) of the Bombay Public Trusts Act was in the nature of either an order or a decree, that would have been a different consequence. In such a case,the plaintiff may be required to pray for the injunction against the execution of such an order or decree.

As far as inquiry under Section 39 of the Bombay Public Trusts Act is concerned, before the plaintiff filed this suit no notice appears to have been served upon the plaintiff. No plea has also been taken in the written statement that such as inquiry has been commenced. Even if such an inquiry was commenced, the result thereof would have been subject to the final decision in the regular suit. Besides, the present suit is filed for the declaration of the committee's power touching the right of the plaintiff, and it has no connection with the administration by the learned Charity Commissioner or it has no relation with the proceedings by the learned Charity Commissioner under Section 39 of the Act. The expression of word "any further relief" in section 39 of the Specific Relief Act, 1963 does not mean every kind of relief but one which would complete the claim of the plaintiff and not lead to multiplicity of suits. Such further reliefs must necessarily flow from the relief of declaration. In the present case, the power of the Committee qua the legal right of the plaintiff have come to be jeopardised as a consequence of the opinion-cum-direction given in Miscellaneous Application No. 245/1968.The plaintiff, therefore, came to be entitled to get the power of the Committee, qua the legal right of the plaintiff declared and nothing further.

In view of this discussion, I am of the opinion

that there was no necessity for the plaintiff to ask for any consequential relief. The only right which had accrued to the plaintiff was to file a suit for declaration under Sec. 34 of the Specific Relief Act.

8. That takes me to the last submission advanced on behalf of the appellant regarding interpretation of Clause-16 of the Scheme. Before the relevant provision of the Scheme in question is considered, it is necessary to give certain facts in brief:

The plaintiff is the Acharya of the Gadi of Shri Nar Narayan Dev of Swaminarayan temples of Northern Diocese of Swami Narayan Sect called as Nar Narayan Dev and its Gadi is situated at Ahmedabad more popularly known as Swaminarayan Mandir at Ahmedabad. The original founder of the Swami Narayan Sect was Shri Sahajanand Swami. During his life time he divided and apportioned the territory (diocese) between the two brothers viz. Shri Pande Ayodhya Prasad Rampratap and Shri Pande Raghuvir Ichcharam who were adopted as sons by Shri Sahajanand Swami. The details of such apportionment are found in Lekh of Shri Sahajanand Swami which is produced at ex. 60. The important directions in the lekh go to show that these two brothers who were required to Grahasthees were to be the spiritual heads of the respective dioceses. These spiritual heads were in complete control of the temples and the temples' property and the income of the temples as the Chief representative of the respective dioceses and although the properties' income belonged to the respective Lords Shri Nar Narayan (Northern diocese) and Shri Laxmi Narayan (Sourthern diocese). These two spiritual preceptors were left with complete control thereof. It may be noted that in this suit, the plaintiff is the Acharya of Shri Swami Narayan Temples of Northern Diocese and has nothing to do with those in Southern Diocese.

9. In view of several litigations, the matter regarding the management of the properties of the institution came to be decided by the Bombay High Court which framed a Scheme by a judgment dated 10.10.1934 delivered by the Division Bench of Bombay High Court in Appeal No. 430 of 1927 with Appeal No. 164 of 1929. The said judgment is produced in the record of the case and the scheme framed by and under the said judgment is at ex. 57. The property of the institution is now being managed by the provisions of the Scheme framed by the Bombay High Court. Clause-16 of the Scheme is relevant for our purpose, which reads as under:

Clause-16 (1): "The Acharya shall be entitled to set aside for his personal use a sum of Rs. 2000/ per month and his personal expenditure other than that referred to in sub-clauses (a) & (b) below shall be kept within that amount and shall not, so long as it is within that amount, be subject to the control of the committee. In very exceptional circumstances the committee shall have power for reasons to be recorded in writing to sanction expenditure in excess of this amount.

As an alternative to the provision mentioned in the earlier part of this clause, the Acharya shall from time to time and for such period or periods as he thinks fit, be at liberty.

(a) to keep to himself for his personal use the "Nam" and the "Bhets" presented to him;

(b) to draw the expenses of and incidental to his household including travelling expenses, from the funds of the institution. If the household expenditure for residence, food, medicine, clothing, servants and vehicles exceeds Rs. 1,500/ in any month such additional expenditure shall be subject to the sanction of the committee;

(c) The term 'Personal expenditure' shall not include either,

(a) the expenses of his household (including expenses upon residence, food, clothing, servants, horses, carriages and elephant) as hitherto met out of the funds of the institution.

(b) any customary expenditure on official tours or on other official occasions."

It is the case of the plaintiff that although the Acharya is entitled to a sum of Rs. 2000/ per month for his personal use and personal expenditure other than that referred to in sub-clause 'a' and 'b' above that amount does not cover expenditure for occasions requiring expenditure in excess of that amount. It is, therefore, submitted that bearing in mind such a contingency, it is provided under Clause-16, sub-clause (1) of the Scheme as under:

> "...In very exceptional circumstances, the committee shall have power of for reasons to be recorded in writing to sanction expenditure in excess of this amount."

It is not disputed by the Charity Commissioner that the committee who sanctioned Rs. 51,000/ for the marriage occasion of the plaintiff's sister and did not assign any reason in sanctioning the said amount. Even though consideration of such exceptional circumstances within the scope of the power of the Committee, the question arises as to what are the exceptional circumstances ? and, how those powers of exceptional circumstances to be exercised ? The Bombay High Court in the judgment ex. 56 at para-26 observed as under:

> "The committee which we propose to appoint under the scheme will have no power to supervise or control the manner in which the Acharya uses this allowance of Rs. 2000/ per month. I assume that normally this amount should be amply sufficient for the Acharya's needs. Circumstances may however, arise, e.g. owing to serious illness of the Acharya or his dependents, or for other causes, which may necessitate unusually heavy expenditure which cannot be met from the monthly allowance. In such cases, which can only be very exceptional, it will be open to the Acharya to obtain the sanction of the committee for a larger grant."

Having seen this observation it appears that the illustration of serious illness of the Acharya or his dependent given by the Bombay High Court cannot be the only one exceptional circumstance as contemplated by the Bombay High Court. The Bombay High Court also provided "or for other causes, which may necessitate unusually heavy expenditure which cannot be met from the monthly

allowance." In my opinion, the marriage of a daughter is an exceptional circumstance which would also be in conformity with the observation of the Bombay High Court, "or for any other cause which may necessitate unusually heavy expenditure" and, therefore, will cover the exceptional circumstance. Learned AGP Mr KC Shah submitted that the exceptional circumstance would mean only circumstance of serious nature and marriage of a daughter cannot be considered to be such an exceptional circumstance. It is, therefore,submitted that the exceptional circumstances are only circumstances i.e. to say that they are the circumstances which are not contemplated normally by a human mind and marriage being a circumstance or an occasion which is always in contemplation by human mind and, therefore, it cannot be said to be an exceptional circumstance. It is not possible for me to accept this submission. As stated above, the illustration of serious illness of the Acharya or his dependent given by the Bombay High Court is not the only one exceptional circumstance under contemplation by the Bombay High Court. Merely because the illustration of serious illness of the Acharya or his dependent given by the Bombay High court, which may be termed as by occasion in human being's life, the good exceptional occasions in the life of Acharya cannot be ignored by not providing amount. If a narrow meaning is given to the interpretation of the judgment of the Bombay High Court or clause-16 of the Scheme, it would mean that the Acharya or his dependent will not be entitled for any other cause, except the cause of serious illness. In my opinion, marriage is not an occasion which periodically takes place in a human being's life. It is also not an occasion which can be said to have any frequency. Although, marriage would be in contemplation of individual, it is not a certainty in a human being's life. If the submission of Mr Shah is accepted, it would mean to limit the exceptional circumstances to only unforeseen circumstances. If expenditure for the marriage occasion of one's child is not taken to be one's personal expenditure what else would be covered by personal expenditure ? Similarly, if marriage of a daughter is not in contemplation under the word 'personal' even the illness of the daughter would not be covered under that ward. That is to say, the whole of the paragraph - 26 of the judgment of the Bombay High Court would render meaning less.

In view of this discussion, I am of the view that the marriage expenses would be covered by the latter part of clause -16 sub-clause (1) of the Scheme, viz. "in very exceptional circumstances, the Committee shall have

power for reasons to be recorded in writing to sanction expenditure in excess of this amount."

In view of this discussion, I see hardly any ground for interference in the judgment rendered by the City Civil Court, Ahmedabad. There being no substance in this appeal, it is dis
circumstances of the case, there shall be no order as to costs.

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